



PATENT  
Docket No. 371312001900

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Application of:

Yukitomo YUHARA

Serial No.: 10/670,770

Filing Date: September 26, 2003

For: COSMETIC CONTAINER

Examiner: Robyn Kieu Doan

Group Art Unit: 3732

**RESPONSE TO ELECTION REQUIREMENT**

MS Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In response to the Action mailed March 7, 2006, applicant provisionally elects to prosecute species II, claims 5-6, *with traverse* and requests reconsideration of the Restriction in view of applicant's remarks below. Applicant agrees that claim 1 is generic.

First, the Examiner has provided no reasons whatever supporting the election requirement. The Examiner has not explained that the inventions of the identified species are separately classified for search and has not contended that searching all three species together would impose an undue search burden. The Action contains no reasoning against which applicant can argue in traversing the election requirement. The Office is required by statute and rule to explain its actions, which the pending Action fails to do. The Examiner should withdraw the election requirement or at least restate it in the next Action so as to apprise applicant fairly of the basis for the election requirement.


Second, the requirement should be withdrawn for another, substantive reason: All of the drawing figures describe a cosmetic container comprising a container section, a lid section for opening and closing the cosmetic container and one or two replaceable covers. This single inventive concept informs all of the drawing figures and the claims. Claim 1 is generic to this concept and to the embodiments disclosed in all of the drawing figures. Furthermore, species II and III are actually differently expressed aspects of the same invention reflected in the first embodiment of the invention as depicted in the figures of species I. Figures 6-9 depict the same embodiment as Figures 1-5, but for using an engaging member formed in a through-hole instead of an engaging member formed on a bending piece. Figures 10-15 are again simply a depiction of the same embodiment using an engaging member formed in a recess.

Early favorable action withdrawing the election of species requirement and allowing the claims in this application is solicited.

In the event that the transmittal letter is separated from this document and the Patent and Trademark Office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no. 371312001900.

Respectfully submitted,

Dated: April 7, 2006

By:   
Brian N. Fletcher  
Registration No. 51,683

Morrison & Foerster LLP  
1650 Tysons Boulevard, Suite 300  
McLean, Virginia 22102  
Telephone: (703) 760-7796  
Facsimile: (703) 760-7777